

Rejection of Claims 1-6, 39 and 41-47 Under 35 U.S.C. 103(a)

The Examiner has rejected claims 1-6, 39 and 41-47 under Section 103(a) as being obvious over U.S. Patent Number 6,066,724 (Ni et al.).

The Examiner's Position

The Examiner contends that Applicants' claimed sequences (i.e., SEQ ID NO:2 and SEQ ID NO:3) are 100% homologous to Ni et al. sequences hESFII and III, respectively. Further, the Examiner alleges that the Ni et al. patent states that the disclosed sequences, as well as hESF 1, which is 92.4% homologous to Applicants' SEQ ID NO:10, is comprised within a larger polypeptide.

The Applicants' Position

The Applicants respectfully traverse the rejection of claims 1-6, 39 and 41-47 under Section 103 as being obvious over Ni et al.

In addition to the arguments presented in the Amendment and Response of December 17, 2001, it is submitted that Ni et al. teach that fragments of the polypeptides disclosed therein may be part of a larger molecule. (See col. 16, lines 22-23.) However, such fragments are not claimed herein, only the full-length polypeptides.

Further, Ni et al. define a "fragment" as "a polypeptide having an amino acid sequence that entirely is the same as part but not all of the amino acid sequence of the aforementioned hESF I, II and III polypeptides and variants or derivatives thereof." (See col. 16, lines 13-16 of Ni et al.) Thus, the "larger molecule" of Ni et al., by definition, cannot contain the full-length amino acid sequences of the present invention, in combination.

In view of the above, it is submitted that the teachings and suggestions of Ni et al. would not have motivated one of ordinary skill in the art to have created the claimed invention at the time the application was filed. In particular, one of ordinary

skill in the art would not have been motivated to have utilized the full length polypeptide sequences of the present invention, in combination. Thus, the claimed invention is not rendered obvious by Ni et al., and the Section 103(a) rejection should be withdrawn accordingly.

In view of the above, it is submitted that the subject application is in condition for allowance and Notice to that effect is respectfully requested.


Should the Examiner have any concerns regarding the above, she is respectfully requested to contact the undersigned at the telephone number listed below.



23492

ABBOTT LABORATORIES  
Telephone: (847) 935-1729  
Facsimile: (847) 938-2623

Respectfully submitted,  
Colpitts, et al.

  
Cheryl L. Becker  
Registration No. 35,441  
Attorney for Applicants